

1 Scott D. Cunningham (State Bar No.: 200413)  
2 Email: scunningham@condonlaw.com  
3 Ivy L. Nowinski (State Bar No.: 268564)  
4 Email: inowinski@condonlaw.com  
5 Condon & Forsyth LLP  
6 1901 Avenue of the Stars, Suite 850  
7 Los Angeles, California 90067-6010  
8 Telephone: (310) 557-2030  
9 Facsimile: (310) 557-1299

10 - and -

11 David J. Harrington (*Pro Hac Vice*)  
12 Email: dharrington@condonlaw.com  
13 CONDON & FORSYTH LLP  
14 7 Times Square  
15 New York, New York 10036  
16 Telephone: (212) 490-9100  
17 Facsimile: (212) 370-4453

18 Attorneys for Defendant  
19 ICON AIRCRAFT, INC.

20 UNITED STATES DISTRICT COURT

21 NORTHERN DISTRICT OF CALIFORNIA

22 ESRA SEVER, individually, and as parent and natural guardian of her minor children, A.S. and B.S., et al.,  
23 Plaintiffs, } Case No. 4:18-cv-00584-HSG  
24 vs. } **STIPULATED PROTECTIVE ORDER**  
25 ICON AIRCRAFT, INC.; MATTHEW WOODRUFF, an individual; KURT PARKER, an individual, EDWARD ELLIS KARKOW as Personal Representative of the Estate of Jon Karkow (deceased); and DOES 1 through 12,

26 Defendants.

27 **INTRODUCTION**

28 Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special

1 protection from public disclosure and from use for any purpose other than  
2 prosecuting this litigation may be warranted. Accordingly, the parties hereby  
3 stipulate to and petition the court to enter the following Stipulated Protective  
4 Order. The parties acknowledge that this Order does not confer blanket protections  
5 on all disclosures or responses to discovery and that the protection it affords from  
6 public disclosure and use extends only to the limited information or items that are  
7 entitled to confidential treatment under the applicable legal principles. The parties  
8 further acknowledge, as set forth in Section 12.3, below, that this Stipulated  
9 Protective Order does not entitle them to file confidential information under seal;  
10 Civil Local Rule 79-5 sets forth the procedures that must be followed and the  
11 standards that will be applied when a party seeks permission from the court to file  
12 material under seal.

## 13 PROTECTIVE ORDER

14 Based upon the foregoing and based upon the stipulation of the Parties, and  
15 good cause appearing, IT IS ORDERED as follows:

16 1. Any Party may designate items of discovery or other information  
17 produced or disclosed to any other Party as confidential and subject to the terms of  
18 this protective order, so long as any such designation is made in good faith. Items,  
19 including documents, tangible things or information, may be designated as  
20 confidential if a Party believes in good faith the information contains trade secrets,  
21 personal information, competitively sensitive information, proprietary or otherwise  
22 confidential information that may be the subject of a protective order under Rule  
23 26 of the Federal Rules of Civil Procedure. All documents designated as  
24 confidential under this Order shall be marked prior to production by placing the  
25 legend “**CONFIDENTIAL**” on each page of the document. Except as otherwise  
26 adjudicated by the Court, all items so marked, and all copies, prints, summaries, or  
27 other reproductions of such information, shall be subject to this Order.

28 2. Unless otherwise directed by the Court or through prior written

1 agreement of the Parties, and subject to the limitations of Paragraph 1 above,  
2 information and documents subject to this Order shall not be used or shown,  
3 disseminated, copied, or in any way communicated to anyone for any purpose  
4 whatsoever, other than as required for the litigation of this action, including any  
5 appeals. Any copies, excerpts, summaries, analyses, or other disclosures of, or  
6 references to, the substance or contents of any information designated as  
7 confidential shall be protected to the same extent as the underlying information.  
8 Except as provided for below and in the paragraphs that follow, the Parties shall  
9 keep all confidential information and documents strictly confidential from all  
10 persons. The information and documents subject to this Order may be disclosed  
11 only to:

- 12 (a) The actual named Parties, in the case of individual (non-corporate)  
13 Parties in this action;
- 14 (b) In the case of corporate Parties in this action, officers, directors,  
15 insurers, in-house counsel and current and former employees of such  
16 corporations deemed reasonably necessary by counsel for the  
17 prosecution, defense, trial or appeal of this action, including  
18 employees and former employees of such Parties who testify as  
19 pretrial or trial witnesses in connection with this action;
- 20 (c) Counsel (and their staff) who represent the Parties in this action;
- 21 (d) Experts or consultants retained by counsel, whether or not they are  
22 expected to testify;
- 23 (e) The Court and court personnel for any purpose the Court finds  
24 necessary;
- 25 (f) Jurors and court personnel at trial of this case; and
- 26 (g) Stenographic and/or videographic personnel hired to record testimony.

27 3. Disclosures shall be made to such persons identified in Paragraph 2,  
28 and such persons may review such disclosures, only as necessary for purposes of

1 litigating this action. The persons identified in Paragraph 2 shall not otherwise  
2 disseminate the information and documents subject to this Order, or the substance  
3 of such information or documents.

4       4. Counsel (and counsel's staff) for the receiving Parties will abide by,  
5 and be bound by, the provisions of this Protective Order, and will use due care to  
6 ensure that the provisions of the Protective Order are known and adhered to by  
7 clients, all persons under counsel's supervision and/or control and any person, firm  
8 or corporation who has been retained by counsel to act on the receiving Party's  
9 behalf in connection with this litigation.

10       5. With respect to deposition testimony and any document marked as an  
11 exhibit thereto, the designation of confidentiality may be made on the record at the  
12 time of the deposition, and the designated testimony shall be subject to the full  
13 protection of this Order, unless challenged in accordance with the procedures of  
14 Paragraph 14. In the case of testimony not so designated during the course of a  
15 deposition, counsel may so designate confidential testimony, within thirty (30)  
16 days of the deposition testimony and/or exhibits which contain confidential  
17 material, in which case the designated testimony and/or exhibits shall be subject to  
18 the full protections of this Order. Until the thirty (30) day period for notification  
19 has elapsed, deposition transcripts in their entirety and all exhibits are to be  
20 considered as confidential and proprietary and subject to the provisions of this  
21 Protective Order. If, prior to and/or during the course of a deposition, a witness  
22 refuses to be bound by the terms of the Protective Order, the deposition shall be  
23 adjourned until application can be made to the Court regarding the deposition.

24       6. Each person given access to documents and information subject to this  
25 Order, except those persons identified in paragraph 2(c), (e), and (f) above, must  
26 acknowledge this Order and agree, in writing, to be bound by all its terms and  
27 conditions. This requirement must be satisfied by obtaining the signature of the  
28 person or persons on a copy of the Agreement to Be Bound by Protective Order,

1 attached as Exhibit "A" hereto. By agreeing to be bound by this Order, each  
2 person consents to the jurisdiction of this Court over his or her person for any  
3 proceedings involving alleged improper disclosure of documents or information  
4 protected by this Order. Each Party shall maintain the original signed written  
5 agreements and a verified list of all experts, consultants or persons to whom the  
6 information and documents or copies thereof were revealed. The list of signatories  
7 shall not be revealed to any other person or persons except through court order,  
8 which shall only be granted upon a showing of good cause. The Party that appears  
9 to have improperly disseminated the protected document or information shall be  
10 required to produce its list of signatories to the Agreement to Be Bound by  
11 Protective Confidentiality Order to the Party having claimed confidentiality.

12 7. If a Party intends to submit to the Court a document marked as  
13 confidential either before or during trial, that Party or any other Party may request  
14 that such document be placed under seal. If the Parties agree, such request shall be  
15 presented to the Court as a stipulated motion. Otherwise, the request shall be  
16 presented to the Court as a contested motion. Compelling reasons must be shown  
17 for the under seal filing. The purpose of this provision is to avoid placing  
18 documents under seal unnecessarily.

19 8. Neither this Order nor the designation of any item as confidential shall  
20 be construed as an admission that such document, information or testimony would  
21 be admissible in evidence in this litigation or in any other proceeding. In addition,  
22 this Protective Order does not, of itself, require the production of any information  
23 or documents; nor does the existence of this Order constitute an admission or  
24 finding that any material marked as confidential is entitled to protection under  
25 applicable law.

26 9. Nothing in this Order shall be deemed a waiver of any Party's right to:  
27 (a) oppose discovery on grounds other than that the same constitutes or contains  
28 confidential information, or (b) object on any ground to the admission in evidence,

1 at the trial of this action, of any confidential information.

2 10. If any Party wishes to petition the Court to modify this Order or its  
3 application to certain documents or information, the Party shall follow all  
4 applicable Federal Rules of Civil Procedure and Local Rules in petitioning the  
5 Court for relief.

6 11. All Parties, within sixty (60) days of the final conclusion of all aspects  
7 of this litigation, or a dismissed Party within thirty (30) days of that Party's  
8 dismissal with prejudice prior to the final conclusion of all aspects of this  
9 litigation, shall:

- 10 (a) Provide to the Party's counsel that originally produced confidential  
11 information a copy of all Agreements executed pursuant to paragraph 6,  
12 above; and
- 13 (b) Retrieve all such confidential information, including all copies thereof  
14 and all documents identifying such confidential information, in that  
15 party's possession, custody or control, or in the possession, custody or  
16 control of all such persons to whom the confidential information was  
17 disseminated pursuant to paragraph 6, and either: 1) return all such  
18 confidential information to the Party's counsel that originally produced  
19 the confidential information (redacting any work product of the receiving  
20 counsel) at the producing counsel's business office or any subsequent  
21 address designated by that counsel, or 2) completely destroy all such  
22 confidential information; and
- 23 (c) Upon written request, provide a declaration under the penalty of perjury  
24 stating that a good faith effort was made to retrieve all such confidential  
25 information received and/or disseminated, and that all such confidential  
26 information has been either returned or destroyed as indicated in  
27 subparagraph (a) and (b) above.

28 12. Up and until the commencement of trial, but not thereafter, the

1 provisions of this Order relating to the confidentiality of protected documents and  
2 information shall remain in full force and effect and continue to be binding, except  
3 with respect to documents or information that are publicly available. This Court  
4 retains jurisdiction over all persons provided access to confidential materials or  
5 information for enforcement of the provisions of this Order up and until trial is  
6 commenced, but not thereafter.

7       13. Nothing in this Order shall be deemed to preclude any Party from  
8 seeking or obtaining, on the appropriate showing, additional protection with  
9 respect to the confidentiality of documents or information. Nor shall any provision  
10 of this Order be deemed to preclude any Party from challenging the validity of the  
11 confidentiality of any materials or information so designated.

12       14. If a Party elects to challenge the designation of confidentiality  
13 (“Challenging Party”) of any document, information or testimony, the Challenging  
14 Party shall notify the Party who designated the challenged document (“Designating  
15 Party”) as confidential of its challenge, in writing. Once the challenge is raised,  
16 the Parties shall promptly confer and make reasonable and good faith efforts to  
17 resolve the disagreement without intervention by the Court. If they are unable to  
18 resolve their differences in good faith within ten (10) days of receipt of the  
19 challenge, the Challenging Party shall request a ruling from the Court with respect  
20 to the confidential treatment of the information at issue within thirty (30) days of  
21 completion of the meet and confer efforts. The Designating Party shall have the  
22 burden to prove that the challenged document, information or testimony is entitled  
23 to protection under applicable law. Until such time as the Parties’ contentions  
24 regarding the confidentiality of documents, information or testimony are fully and  
25 finally adjudicated, all documents, testimony or other materials designated by  
26 defendants as confidential shall retain their confidential status. Nothing in this  
27 agreement shall be deemed to alter, modify or reduce the burden on any party  
28 asserting a privilege to make out all elements of the privilege claimed.

1       15. It is recognized by the Parties to this Protective Order that documents  
2 or testimony may be designated inadvertently or erroneously as confidential, or  
3 that such a designation inadvertently or erroneously may be omitted with respect to  
4 documents or information that are entitled to such protection. Any Party to this  
5 Protective Order may correct its designation or lack thereof within a reasonable  
6 time and shall, at its own expense, furnish to all counsel copies of the documents  
7 for which there is a change in designation.

8       16. It is recognized by the Parties that documents or testimony stamped as  
9 confidential may be inadvertently disclosed to third parties by a receiving Party.  
10 Any receiving Party may correct this inadvertent disclosure without sanction by  
11 immediately bringing it to the attention of the producing Party by letter to the  
12 producing Party's counsel in which the third Party is identified by name and  
13 address. The receiving Party shall further provide an affidavit of counsel  
14 confirming that to the best of his or her knowledge the documents and any copies  
15 thereof were recovered from the third party.

16       17. All documents or information produced by the Parties prior to the  
17 entry of this Protective Order by the Court shall be subject to the provisions of this  
18 Protective Order to the same extent as if such Protective Order had been entered by  
19 the Court as of the date such documents or information were produced. Producing  
20 Parties shall have thirty (30) days from the date of entry of this Order to designate  
21 already-produced materials as confidential. However, documents or information  
22 obtained through means other than discovery in this action shall not be subject to  
23 this Protective Order.

24       18. In the event that any person identified in paragraph 2 above who has  
25 been provided access to confidential information produced in this action ("Person  
26 Served"): (a) is served with a subpoena in another action, or (b) is served with a  
27 demand in another action to which he or she is a party, or (c) is served with any  
28 other legal process by one not a Party to this litigation, seeking information that

1 has been produced in this action by another Party and which is subject to this  
2 Protective Order, the Person Served shall give prompt written notice of such event  
3 to counsel of record for the Party that produced the information. Upon receipt of  
4 written notice, the Party which produced the information shall advise the Person  
5 Served of that Party's position with respect to the protected information.  
6 Thereafter, the Party which produced the information shall assume responsibility  
7 for prosecuting any objection to the discovery requests, subpoena or demand, and  
8 the Person Served shall cooperate to the extent necessary to preserve the  
9 confidentiality of the information. Should the person seeking access to  
10 information take action to enforce such discovery requests, subpoena, demand, or  
11 other legal process, the Person Served shall set forth in his response the existence  
12 of this Stipulated Protective Order. Nothing herein shall be construed as requiring  
13 the receiving Party to challenge or appeal any order requiring production of the  
14 information.

15       19. This Order shall not prejudice the Parties' rights or arguments  
16 regarding whether documents or information used at trial do or do not remain  
17 confidential. Such issues will be taken up as a separate matter upon motion of any  
18 Party.

19       20. It is understood by the Parties that this Stipulated Protective Order  
20 may be executed in one or more counterparts, each of which shall be deemed an  
21 original.

22  
23  
24  
25  
26  
27  
28

1 Dated: July 20, 2018

NELSON & FRAENKEL LLP

3 By: /s/ Carlos F. Llinas Negret

4 STUART R. FRAENKEL  
5 CARLOS F. LLINAS NEGRET  
6 NICOLE C. ANDERSEN

7 -and-

8 MICHAEL S. DANKO  
9 CLAIRE Y. CHOO  
10 DANKO MEREDITH APC

11 Attorneys for Plaintiff  
12 ESRA SEVER

13 ATTESTED that all other  
14 signatories listed, and on whose  
15 behalf this document is  
16 submitted, concur in its content  
17 and have authorized its filing:

18 Dated: July 20, 2018

CONDON & FORSYTH LLP

19 By: /s/ Ivy L. Nowinski

20 SCOTT D. CUNNINGHAM  
21 IVY L. NOWINSKI

22 -and-

23 DAVID J. HARRINGTON  
24 CONDON & FORSYTH LLP  
25 7 Times Square  
26 New York, NY 10036  
27 Telephone: (212) 490-9100  
28 Facsimile: (212) 370-4453

Attorneys for Defendant  
ICON AIRCRAFT, INC.

1 **APPROVED AS TO FORM:**

2 **EXHIBIT "A"**

3  
4 **AGREEMENT TO BE BOUND BY PROTECTIVE ORDER**

5  
6 I, the undersigned, acknowledge that I will be receiving documents that have  
7 been designated confidential and subject to the terms of the Stipulated Protective  
8 Order entered in the above-captioned case. I understand that such confidential  
9 material is to be provided to me pursuant to the terms and restrictions of the  
10 aforementioned Protective Order and acknowledge that I have been given a copy  
11 of and have read that Protective Order. I understand that any use by me of  
12 documents or information designated confidential under the Stipulated Protective  
13 Order, or any portion or summaries thereof, in any manner contrary to the  
14 provisions of the Stipulated Protective Order, will subject me to the sanctions of  
15 the Court. I hereby agree to be bound by all of its terms.

16 I declare under penalty of perjury under the laws of the United States that  
17 the foregoing is true and correct.

18 Dated this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.  
19

20 \_\_\_\_\_  
21 *Signature*

22 \_\_\_\_\_  
23 *Printed Name*

24 \_\_\_\_\_  
25 *Witness*

26 \_\_\_\_\_  
27 *Printed Name*

1  
2  
3  
4 **IT IS SO ORDERED.**  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Dated: July 23, 2018

  
Honorable Haywood S. Gilliam, Jr.  
United States District Judge

CONDON & FORSYTH LLP  
1901 Avenue of the Stars, Suite 850  
Los Angeles, California 90067-6010  
Telephone: (310) 557-2030